BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
LONG BEACH BUILDING AND LOAN ASSOCIATION)

Appearances:

For Appellant! Hugh Linneil, Attorney

For Respondent: Chas. J. McColgan, Franchise Tax Commissione

O P I N I O N

This is an appeal pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Ch. 13, Stats. of 1929, as amended from the action of the Franchise Tax Commissioner in denying the claim of Long Beach Building and Loan kssociatioh for a refund of an alleged overpayment of tax in the amount of $2,399.49 for the year 1934, based upon its return for the year ended December 31, 1933.

In its return for the year ended December 31, 1933 Appellant reported net income for the year in the amount of $119,456.6 A tax for the privilege of exercising its corporate franchise for the year 1934, measured by such net income was duly paid. It subsequently filed an amended return showing a loss for the year and claimed a refund in the amount above stated, Following the denial of the claim by the Commissioner, this appeal was filed. Appellant states that the entire amount reported as income in its original return consisted entirely of gains resulting from a reduction in the rate of interest paid to its investors and from the cancellation of its own certificates received at less than face value in exchange for real estate, loans, bonds, etc. Except for these gains, Appellant insists that it operated at a loss during the year 1933.

It seems that the reduction in the rate of interest was made pursuant to, and the cancellation of certificates was authorized by emergency legislation relating to building and loan associations which became effective in 1933, (Cal. Stats. Chs. 31 and 431). This legislation provided that all gains resulting from the operation of the legislation during the period of the emergency should be set aside as a permanent reserve for losses and for the protection of the investors of building and loan associations, and should not be used in the payment of dividends at any time.

Appellant contends that gains resulting from this legislatio are not income within the generally accepted definition of the term. In support of this contention, it cites a number of cases holding that income is gain derived from capital, from labor,

or from both combined. It points out that before there can be income, two requirements must be met: (1) There must be gain from capital, from labor, or from both combined; and (2) there must be realization. It argues that since the gain in question must be set aside as a permanent reserve for losses, they were not realized, and, consequently, cannot be considered income.

We are not convinced that the gains in question are not income within the meaning of that term as indicated in the cases cited by Appellant. We do not believe, however, that it would serve any useful purpose further to consider this point since the act itself clearly specifies what shall be considered income for the purposes of the Act.

"Net income", which is the measure of the tax imposed by the Act, is defined in Section 7 as being gross income less the deductions allowed. Section 6 provides that "gross income includes gains, profits and income derived from the business, of whatever kind and in whatever form paid; gains, profits or income from dealings in real or personal property; gains, profits or income received as compensation for services, as interest, rents, commissions, brokerage or other fees, or otherwise received in carrying on such business; all interest received from Federal, state, municipal or other bonds, and, except as hereinafter otherwise provides, all dividends received on stocks."

Appellant does not contend that any items were erroneously included in gross income, as that term is used in the Act, in arriving at the net income reported on its original return for the year 1933, upon the basis of which the tax Appellant seeks to recover was computed. Furthermore, Appellant has not called to our attention any provision of the Act authorizing a deduction from gross income which was not made in arriving at such net income. It follows that the amount reported as net income in its original return is the net income which the Act provides shall be used as the measure of the tax imposed by the Act. Whether or not this amount is income within the ordinary or accepted sense if immaterial since it does not appear that the Legislature is confined to the levying of taxes measured by what is ordinarily or general considered income.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of the Franchise Tax Commissioner in denying the claim of Long Beach Building and Loan Association for a refund in the amount of $2,399.49, said amount having been paid as a tax for the year 1934, based upon its return for the year ended December 31, 1933, be and the same is hereby sustained.

Appeal of Long Beach Building and Loan Association

Dated at Sacramento, California, this 25th day of October, 1935, by the State Board of Equalization.

R. E. Collins, Chairman
John C. Corbett, Member
Fred E. Stewart, Member
Orfa Jean Shontz, Member
Ray L. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary